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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH**

G.A. No. 740/87
T.A. No.

1990

DATE OF DECISION: 10.08.1990

Yes Pal

Petitioner

Shri A.B.Oka,

Advocate for the Petitioners

v/s.

**Director General of Ordnance Factory
and two others.**

Respondent

Shri Ramesh Darda,

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. I.K.Rasgotra, Member(A).

1. **Whether Reporters of local papers may be allowed to see the Judgement?** *X*
2. **To be referred to the Reporters or not?** *yes*
3. **Whether their Lordships wish to see the fair copy of the Judgement?** *X*
4. **Whether it needs to be circulated to other Benches of the Tribunal?** *X*

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :NEW BOMBAY BENCH
NAGPUR.

O.A.740/87.

Yes Pal ... Applicant.
versus
Director General of Ordnance Factory
and two others ... Respondents.

P R E S E N T :

The Hon'ble Sri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Sri I.K.Rasgotra, Member(A).

For the applicant- Sri A.B.Oka, Advocate.

For the respondents- Sri Ramesh Darda, Advocate.

Date of hearing- 8.8.90.

Date of Order - 19.8.90.

JUDGMENT & ORDER :

G.SreedharanNair, Vice Chairman :-

The applicant who was a Supervisor attached to the Ordnance Factory at Chanda was proceeded against for the alleged misconduct by the issue of a Memorandum of Charges dated 22.11.1977. There were two imputations. The first was that by running an unauthorised illicit liquor business in the quarter occupied by him in the Ordnance Factory Estate, he has contravened the instructions contained in the Estate Order No.23 and the provisions of law relating to the Bombay Prohibition Act as well as Rule 15(1) of the CCS(Conduct) Rules. The second imputation was that on 8.11.1977 at about 9 PM he threatened two security personnel while they were on duty associating themselves with the local officials for a raid in the quarter occupied by the applicant and thereby contravened Clause (iii) of sub-rule (1) of Rule 3 of the aforesaid Rules. The applicant denied the charge. An enquiry was conducted. The Inquiry Officer held that the charges are established. The Disciplinary Authority accepting the report of the Inquiry Officer imposed upon the applicant the penalty of reduction in rank from officiating Supervisor 'A' Grade to

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Officiating Supervisor 'B' Grade. The appeal submitted by the applicant ^{was} ~~was~~ rejected by the appellate authority by the order dated 16.9.1987.

2. The applicant has prayed for quashing the order imposing the penalty. It is urged that the finding has been based on the First Information Report before the Criminal Court and as the prosecution itself was withdrawn, the finding of the Inquiry Officer is unsustainable. It is further urged that there has been denial of reasonable opportunity of defence in so far as the request of the applicant to summon and examine witnesses was not allowed. There is the plea that the findings of the Inquiry Officer as well as the order of the Disciplinary Authority are without application of mind.

3. The respondents have filed reply traversing the averments in the application.

4. The counsel of the applicant submitted that the finding in respect of the first imputation is totally perverse, as it is solely based on the FIR filed by the police before the Criminal Court, in view of the fact that the Inquiry Officer was apprised that ~~it~~ despite filing of the FIR, the prosecution had withdrawn the case. There is considerable force in the submission, and, as such, it has to be accepted. It has also to be pointed out that there was absolutely no material before the Inquiry Officer to arrive at the conclusion that the applicant was running unauthorised/ illicit liquor business in the quarter occupied by him. It is seen that the Inquiry Officer was carried away by the fact that there were some liquor bottles at the residence of the applicant, ^{which were seized at the time of the raid.} However, he has not adverted to the

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specific case of the applicant that he is an ex-army personnel and was having a valid permit issued by the Collector for keeping liquor. It appears that alongwith the letter dated 23.8.1979 praying for revocation of his suspension order, the aforesaid permit was also produced by the applicant before the Disciplinary Authority. The Disciplinary Authority has also not applied his mind on the ^{truth} ~~nature~~ of the imputation before agreeing with the report of the Inquiry Officer and imposing the penalty.

5. As regards the second imputation, it cannot be said that the finding is not based on ~~xxx~~ evidence, for there was the evidence by the Security Personnel and it was placing reliance on the same that the Inquiry Officer arrived at the conclusion that the imputation is true.

6. Evidently, the imputation contained in the first article of charge is the graver one, and, as such, it can safely be presumed that the penalty of reduction in rank was imposed on the applicant having regard to the fact that the said imputation is established. Hence, the order of the Disciplinary Authority imposing the penalty of reduction in rank deserves to be quashed.

7. In view of the foregoing, we quash the order of the Disciplinary Authority ^{imposing} upon the applicant the penalty of reduction in rank, as confirmed by the order of the Appellate Authority, and remit the matter to the Disciplinary Authority for a fresh disposal of the matter by the imposition of an appropriate penalty on the applicant in view of the truth of the imputation contained in the second Article of Charge ~~alone~~ having been established.

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8. The application is disposed of as above.

I.K. Rasgotra
(I.K. Rasgotra)
Member (Admn) 7.8.90

G. Sreedharan Nair
(G. Sreedharan Nair)
Vice Chairman. 10.8.1990

S.P. Singh/
9.8.90.

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